



Western Australia

Western Australian Health Promotion Foundation Act 2016

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Western Australia

Western Australian Health Promotion Foundation Act 2016

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Western Australia

Western Australian Health Promotion Foundation Act 2016

An Act to —

- **make provision for the Western Australian Health Promotion Foundation; and**
- **make consequential amendments to the *Tobacco Products Control Act 2006* and other Acts.**

Part 1 — Preliminary

1. Short title

This is the *Western Australian Health Promotion Foundation Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

Account means the Western Australian Health Promotion Account mentioned in section 42(1);

CEO means the chief executive officer of the Foundation mentioned in section 35(1);

committee means a committee appointed under section 27(1);

Foundation means the Western Australian Health Promotion Foundation mentioned in section 5;

member means a member of the Foundation mentioned in section 11(1)(a) or (b);

presiding member means the member of the Foundation mentioned in section 11(1)(a);

racing means horse racing or pacing, dog racing, motor car racing or motorcycle racing;

sporting includes recreational and other such activities but does not include racing;

staff member means the CEO or a person appointed or engaged as mentioned in section 36(1) or (2).

4. Object of Act

The object of this Act is to promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles.

[Parts 2-9 have not come into operation².]

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Notes

¹ This is a compilation of the *Western Australian Health Promotion Foundation Act 2016*^{1a}. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Western Australian Health Promotion Foundation Act 2016</i> Pt. 1	3 of 2016	21 Mar 2016	21 Mar 2016 (see s. 2(a))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Western Australian Health Promotion Foundation Act 2016</i> Pt. 2-9 ²	3 of 2016	21 Mar 2016	1 Sep 2016 (see s. 2(b) and <i>Gazette</i> 26 Jul 2016 p. 3145)

² On the date as at which this compilation was prepared, the *Western Australian Health Promotion Foundation Act 2016* Pt. 2-9 had not come into operation. They read as follows:

Part 2 — Western Australian Health Promotion Foundation

Division 1 — The Foundation

5. Foundation established

- (1) A body called the Western Australian Health Promotion Foundation is established.
- (2) The Foundation is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Foundation in its corporate name.

- (4) The Foundation may use, and operate under, one or more trading names approved by the Minister.
- (5) A trading name can be —
 - (a) an abbreviation or adaptation of the Foundation's corporate name; or
 - (b) a name other than the Foundation's corporate name.

6. Status of Foundation

- (1) The Foundation is an agent of the State and has the status, immunities and privileges of the State.
- (2) The Foundation is an SES organisation under the *Public Sector Management Act 1994*.

Division 2 — Functions of Foundation

7. Functions

- (1) The functions of the Foundation are —
 - (a) to fund activities related to the promotion of good health in general with particular emphasis on young people; and
 - (b) to support sporting and arts activities which encourage healthy lifestyles and advance health promotion programmes; and
 - (c) to provide grants to organisations engaged in health promotion programmes; and
 - (d) to fund research relevant to health promotion; and
 - (e) to raise funds by soliciting donations and grants and, subject to subsection (2), engaging in the production or marketing mentioned in section 8(2)(b) in order to support the work of the Foundation; and
 - (f) to evaluate and report on the effectiveness of the performance of the Foundation in achieving health promotion activities; and
 - (g) generally to achieve the object of this Act.
- (2) It is not a purpose of the Foundation to make a profit by engaging in the production or marketing mentioned in section 8(2)(b), but any surplus of revenue over expenditure arising as a result of that engagement must be credited to the Account.

8. Powers

- (1) The Foundation has all the powers it needs to perform its functions.

- (2) Without limiting subsection (1), the Foundation may for the purpose of performing a function —
- (a) make grants to any of the following —
 - (i) sporting organisations;
 - (ii) arts organisations;
 - (iii) health organisations;
 - (iv) community organisations;
 - (v) research organisations;
 - (vi) youth organisations;
 - (vii) racing organisations;
 - and
 - (b) engage in the production or marketing or both of goods and services which themselves constitute or form part of health promotion activities —
 - (i) to promote the object of this Act and the functions of the Foundation; and
 - (ii) to cover the cost of that production or marketing or both by generating revenue;
 - and
 - (c) acquire, hold, deal with and dispose of real and personal property.

9. Delegation by Foundation

- (1) The Foundation may, subject to this section, delegate any power or duty of the Foundation under another provision of this Act to —
- (a) a member, the CEO or any other staff member; or
 - (b) a committee.
- (2) The Foundation cannot delegate its function of determining to whom, or in what amounts, financial support may be provided from money standing to the credit of the Account unless that function —
- (a) is delegated to the CEO or a committee; and
 - (b) is limited to amounts of \$5 000 or less.
- (3) The delegation must be in writing executed by the Foundation.
- (4) The delegation may expressly authorise the delegate to further delegate the power or duty unless the delegation is of a kind mentioned in subsection (2).
- (5) When a delegation is made to a committee under this section —

- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting under the delegation; and
 - (b) the committee may, if the instrument of delegation so provides, act by a majority of the committee members present at a meeting of the committee.
- (6) A person to whom, or a member of a committee to which, a power or duty is delegated under this section is disqualified from acting under the delegation in relation to any matter in which the person or the member of the committee has a material personal interest.
- (7) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section must be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of the Foundation to perform a function through an officer or agent.
- (9) This section does not apply to the execution of documents but authority to execute documents on behalf of the Foundation can be given under section 34(5).

Part 3 — Administration of Foundation

Division 1 — How Foundation is constituted

10. Term used: unable to act

In this Division —

unable to act means unable to act as a member for any reason, including —

- (a) illness; and
- (b) absence; and
- (c) the operation of section 31(1).

11. Foundation membership, presiding member

- (1) The Foundation consists of —
 - (a) the presiding member appointed under subsection (3); and
 - (b) 6 other members appointed by the Minister.
- (2) Of the 7 members —
 - (a) at least one must be a person who, in the opinion of the Minister, has knowledge of and experience in the arts; and

- (b) at least one must be a person who, in the opinion of the Minister, has knowledge of and experience in health; and
 - (c) at least one must be a person who, in the opinion of the Minister, has knowledge of and experience in sport; and
 - (d) each of the others must be a person who, in the opinion of the Minister, has knowledge of and experience in one or more of the fields of the arts, finance, governance, health, law, management, marketing or sport.
- (3) The presiding member must be appointed by the Minister on the nomination of the Premier.
 - (4) The Premier must consult with the parliamentary leader of each party in the Parliament before making a nomination for the purposes of subsection (3).

12. Deputy presiding member

- (1) The Minister must designate a member other than the presiding member to be the deputy presiding member of the Foundation.
- (2) If the presiding member is unable to act or if there is no presiding member, the deputy presiding member must act in the presiding member's place.
- (3) An act or omission of the deputy presiding member acting in the presiding member's place cannot be questioned on the ground that the occasion to act had not arisen or had ceased.

13. Remuneration and allowances

Members are entitled to be paid out of the funds of the Foundation any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

14. Term of office

- (1) A member holds office for the term, not exceeding 3 years, that is specified in the member's instrument of appointment.
- (2) A member is eligible for reappointment but cannot hold office for more than 9 years, consecutively or otherwise.

15. Casual vacancies

- (1) In this section —
misconduct includes conduct that renders the member unfit to hold office as a member even though the conduct does not relate to a duty of the office.
- (2) The office of a member becomes vacant if the member —

- (a) dies, resigns or is removed from office under this section; or
 - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence under section 30(1).
- (3) A member may at any time resign from office by written notice given to the Minister.
- (4) The Minister may remove a member from office on the grounds of —
- (a) neglect of duty; or
 - (b) misconduct or incompetence; or
 - (c) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
 - (d) absence, without leave, from 3 consecutive meetings of the Foundation of which the member has had notice.

16. Extension of term of office during vacancy

- (1) If the office of a member becomes vacant because the member's term of office expires by effluxion of time, the member must be taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) Subsection (1) ceases to apply if the member resigns or is removed from office under section 15.
- (3) The maximum period for which a member must be taken to continue to be a member under this section after the member's term of office expires is 3 months.

17. Leave of absence

The Foundation may, on any terms and conditions it thinks fit, grant a member leave to be absent from office.

18. Alternate members

- (1) If a member other than the presiding member is unable to act, the Minister may appoint another person as an alternate member to act temporarily in the member's place.
- (2) If the deputy presiding member is unable to act in the presiding member's place at a meeting —

- (a) the members present may elect one of their number to act as presiding member; and
 - (b) subsection (1) applies as if the member elected were absent from the meeting.
- (3) While acting in accordance with the appointment, the alternate member must be taken to be, and to have any entitlement of, a member.
- (4) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

Division 2 — Foundation meetings

19. Holding meetings

The first meeting of the Foundation after this section comes into operation must be convened by the presiding member and subsequent meetings are to be held at times and places determined by the Foundation.

20. Quorum

Four members constitute a quorum.

21. Presiding member

The presiding member must preside at a meeting of the Foundation at which the presiding member is present.

22. Procedure at meetings

The Foundation must determine its own meeting procedures to the extent that they are not fixed by this Act.

23. Holding meetings remotely

The presence of a person at a meeting of the Foundation need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

24. Voting

- (1) At a meeting of the Foundation, each member present has a deliberative vote unless section 31 prevents the member from voting.
- (2) In the case of an equality of votes, the member who is presiding has a casting vote in addition to a deliberative vote.
- (3) A question is resolved by a majority of the votes cast.

25. Resolution without meeting

A resolution in writing signed or otherwise assented to in writing by each member has the same effect as if it had been passed at a meeting of the Foundation.

26. Minutes to be kept

The Foundation must keep accurate minutes of its meetings.

Division 3 — Committees

27. Committees

- (1) The Foundation may —
 - (a) appoint any committee it considers necessary to provide advice or assistance to the Foundation in relation to the Foundation's functions; and
 - (b) appoint the members, and determine the functions, of a committee; and
 - (c) discharge or alter a committee.
- (2) The Foundation must ensure that there are sufficient country representatives appointed as committee members.
- (3) A committee must comply with all reasonable directions or requirements of the Foundation, and otherwise may determine its own procedures.
- (4) A committee must keep minutes of its meetings to a standard approved by the Foundation and provide the Foundation with a copy of the minutes of each meeting.

28. Remuneration and allowances

Committee members are entitled to be paid out of the funds of the Foundation any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

Division 4 — Disclosure of interests

29. Term used: member

In this Division other than section 33 —
member includes a committee member.

30. Disclosure of material personal interest

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Foundation or a committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the

interest at a meeting of the Foundation or the committee, as is relevant.

Penalty: a fine of \$10 000.

- (2) A disclosure under this section must be recorded in the minutes of the meeting.

31. Voting by interested member

- (1) A member who has a material personal interest in a matter that is being considered by the Foundation or a committee —
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at a meeting.
- (2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 32 in respect of the matter, whether relating to that member or a different member.

32. Section 31 may be declared inapplicable

Section 31 does not apply if —

- (a) a member has disclosed under section 30 an interest in a matter; and
- (b) the Foundation has at any time passed a resolution that —
 - (i) specifies the member, the interest and the matter; and
 - (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

33. Quorum where section 31 applies

- (1) Despite section 20, if a member is disqualified under section 31 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter to the extent that the Foundation cannot deal with it because of subsection (1).

Division 5 — Execution of documents

34. Execution of documents by Foundation

- (1) The Foundation must have a common seal.
- (2) A document is duly executed by the Foundation if —
 - (a) the common seal of the Foundation is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Foundation by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Foundation must not be affixed to any document except as authorised by the Foundation.
- (4) The common seal of the Foundation must be affixed to a document in the presence of one of its members who must sign the document to attest that the common seal was so affixed.
- (5) The Foundation may, by writing under its common seal, authorise one or more of its members or the CEO or any other staff member to sign documents on behalf of the Foundation, either generally or subject to the conditions that are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section must to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Foundation, it must be presumed that the seal is the common seal of the Foundation until the contrary is shown.

Part 4 — Staff

35. Chief executive officer

- (1) A chief executive officer of the Foundation is to be appointed under the *Public Sector Management Act 1994* Part 3.
- (2) The chief executive officer is to administer the day-to-day operations of the Foundation subject to the control of the Foundation.

36. Other staff

- (1) Public service officers may be appointed under the *Public Sector Management Act 1994* Part 3 to enable the Foundation to perform its functions.
- (2) Subsection (1) does not affect the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Foundation to engage a person under a contract for services or appoint a person on a casual employment basis.

37. Contracts for services

- (1) The Foundation may engage a person to perform services for the purposes of this Act under a contract for services on the terms and conditions (including as to remuneration) that the Foundation thinks fit.
- (2) A person engaged under subsection (1) is not a person appointed under the *Public Sector Management Act 1994* Part 3.

38. Use of other government staff and facilities

- (1) The Foundation may by arrangement with the relevant employing authority make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service; or
 - (b) in a State agency; or
 - (c) otherwise in the service of the State.
- (2) The Foundation may by arrangement with —
 - (a) a department of the Public Service; or
 - (b) a State agency,make use of any facilities of the department or agency.
- (3) An arrangement under subsection (1) or (2) must be made on the terms agreed to by the parties.

Part 5 — Accountability

39. Minister may give directions

- (1) The Minister may give written directions to the Foundation with respect to the performance of its functions, either generally or in relation to a particular matter, and the Foundation must give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Foundation with respect to the provision of funds or grants under this Act.
- (3) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 48, within 14 days after the direction is given.
- (4) The text of a direction under subsection (1) must be included in the annual report submitted by the accountable authority of the Foundation under the *Financial Management Act 2006* Part 5.

40. Minister to have access to information

- (1) In this section —
document includes any tape, disk or other device or medium on which information is recorded or stored;

information means information specified, or of a description specified, by the Minister that relates to the functions of the Foundation.

- (2) The Minister is entitled —
 - (a) to have information in the possession of the Foundation; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Foundation to furnish information to the Minister; or
 - (b) request the Foundation to give the Minister access to information; or
 - (c) request the use of a staff member to obtain the information and give it to the Minister.
- (4) The Foundation must comply with a request under subsection (3).

Part 6 — Financial provisions

41. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Foundation and its operations.

42. Western Australian Health Promotion Account

- (1) An account called the Western Australian Health Promotion Account is established as an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) Money received by the Foundation must be credited to, and money paid by the Foundation must be debited to, the Account.

43. Foundation's funds and expenditure

- (1) The funds available for the purpose of enabling the Foundation to perform its functions consist of money that is lawfully received by, or made available to, the Foundation.
- (2) In respect of each financial year, the prescribed amount must be paid to the Foundation, and the Consolidated Account is appropriated accordingly.
- (3) The Foundation must not decide or announce any decision to disburse any part of the Account, under section 8(2)(a), during —

- (a) the period from the issue of the writ for a general election, whether State or Federal, to be held within the State until the close of voting in that election; or
 - (b) the period from the issue of the writ for an election in relation to a vacancy, whether State or Federal, to be held within the State until the close of voting in that election, if the decision relates to the division or district in respect of which that election is to be held.
- (4) The Foundation must endeavour to ensure that, in each financial year —
 - (a) not less than 30% of the money paid under subsection (2) in any one financial year is disbursed to sporting organisations which the Foundation is satisfied are promoting, or will promote, the object of this Act; and
 - (b) not less than 15% of the money paid under subsection (2) in any one financial year is disbursed to arts organisations which the Foundation is satisfied are promoting, or will promote, the object of this Act; and
 - (c) not more than 50% of the money paid under subsection (2) in any one financial year is disbursed to any one of the following kinds of organisations which the Foundation is satisfied are promoting, or will promote, the object of this Act —
 - (i) sporting organisations;
 - (ii) arts organisations;
 - (iii) health organisations;
 - (iv) community organisations;
 - (v) research organisations;
 - (vi) racing organisations.
- (5) A decision of the Foundation to disburse any money from the Account must be approved by the Minister before the money is disbursed.
- (6) All money standing to the credit of the Account immediately before the commencement of a financial year must, subject to section 42(2), remain in and standing to the credit of the Account after that commencement.
- (7) The Foundation must endeavour to commit the funds received from the State by it to the object of this Act within the year they are received or reasonably soon thereafter and must include in its annual report the reason for any amount of those funds remaining not so committed beyond that year.

- (8) Any amount of funds received by the Foundation from the State which have not been committed to the object of this Act within 4 months of the end of the financial year for which they have been allocated or 4 months of receipt if received outside the financial year are to be returned to the Consolidated Account.

44. Notice of financial difficulty

- (1) The Foundation must notify the Minister if it forms the opinion that the Foundation is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available to it or likely to be available to it at the time the financial obligation is due.
- (2) The notice must be in writing, giving reasons for the Foundation's opinion.
- (3) Within 7 days after receipt of the notice, the Minister must —
- (a) confer with the Treasurer and the Foundation for the purpose of determining what action is required to ensure that the Foundation is able to satisfy the relevant financial obligation when it is due; and
 - (b) initiate such action as is required to ensure that the Foundation is able to satisfy the relevant financial obligation when it is due.

Part 7 — Miscellaneous

45. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Foundation nor the State is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

46. Confidentiality of information

- (1) A person must not record, disclose or make use of any information obtained by reason of a function that the person has, or at any time had, in the administration of this Act except —

- (a) for the purpose of performing a function under this Act; or
- (b) as required or allowed by this Act or under another written law; or
- (c) for the purposes of proceedings in a court; or
- (d) with the written consent of the person to whom the information relates; or
- (e) in prescribed circumstances.

Penalty: a fine of \$10 000 and imprisonment for 12 months.

- (2) Subsection (1) does not apply to the recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

47. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

48. Laying documents before House of Parliament not sitting

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament or be dealt with under this section within a period and —
 - (a) when the Minister is ready to act, a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House must be taken to have been laid before that House.
- (3) The laying of a copy of a document that, under subsection (2), is taken to have occurred must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

49. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act as soon as is practicable after —
 - (a) the expiry of 5 years from the day on which Part 2 comes into operation; and

- (b) every fifth anniversary of that day.
- (2) The Minister must, as soon as is practicable after completion of the review —
 - (a) prepare a report about the outcome of the review; and
 - (b) cause a copy of the report to be laid before each House of Parliament or dealt with under section 48.

Part 8 — Consequential amendments to other Acts

Division 1 — *Constitution Acts Amendment Act 1899* amended

50. Act amended

This Division amends the *Constitution Acts Amendment Act 1899*.

51. Schedule V amended

In Schedule V Part 3 in the item relating to the Western Australian Health Promotion Foundation delete “*Tobacco Products Control Act 2006*.” and insert:

Western Australian Health Promotion Foundation Act 2016.

Division 2 — *Public Sector Management Act 1994* amended

52. Act amended

This Division amends the *Public Sector Management Act 1994*.

53. Schedule 2 amended

In Schedule 2 after item 58 insert:

- 59A. Western Australian Health Promotion Foundation, under the *Western Australian Health Promotion Foundation Act 2016*

Division 3 — *Tobacco Products Control Act 2006* amended

54. Act amended

This Division amends the *Tobacco Products Control Act 2006*.

55. Section 3 replaced

Delete section 3 and insert:

3. Purposes of Act

The purposes of this Act are to reduce the incidence of illness and death related to the use of tobacco products —

- (a) by prohibiting the supply of tobacco products and smoking implements to young persons; and
- (b) by discouraging the use of tobacco products; and
- (c) by restricting the promotion of tobacco products and smoking generally; and
- (d) by reducing the exposure of people to tobacco smoke from tobacco products that are smoked by other people.

56. Part 5 heading replaced

Delete the heading to Part 5 and insert:

Part 5 — Administration

57. Part 5 Divisions 1 to 3 deleted

Delete Part 5 Divisions 1, 2 and 3.

58. Part 5 Division 4 heading deleted

Delete the heading to Part 5 Division 4.

59. Section 122 deleted

Delete section 122.

60. Section 124A amended

In section 124A(2) delete “or the Foundation has under this Act.” and insert:

has under this Act or the Foundation has under the *Western Australian Health Promotion Foundation Act 2016*.

61. Section 126 deleted

Delete section 126.

62. Schedule 1 deleted

Delete Schedule 1.

63. Schedule 2 deleted

Delete Schedule 2.

64. Glossary amended

- (1) In the Glossary delete the definitions of:

Account

chairperson

committee

executive director

member

racing

sporting

- (2) In the Glossary in the definition of *Foundation* delete “established by section 59;” and insert:

mentioned in the *Western Australian Health Promotion Foundation Act 2016* section 5;

Part 9 — Transitional provisions

65. Terms used

In this Part —

TPC Act Account means the Account as defined in the *Tobacco Products Control Act 2006* Glossary immediately before transition day;

TPC Act Foundation means the Foundation as defined in the *Tobacco Products Control Act 2006* Glossary immediately before transition day;

transition day means the day on which Part 8 Division 3 comes into operation.

66. Interpretation Act 1984 not affected

Except to the extent this Part expressly provides differently, the *Interpretation Act 1984* applies in relation to the repeal of an enactment by Part 8 Division 3.

67. Foundation continues

- (1) The Foundation as defined in section 3 is a continuation of, and the same legal entity as, the TPC Act Foundation and on and after transition day —
 - (a) the assets, rights and liabilities of or in relation to the TPC Act Foundation continue as assets, rights and liabilities of or in relation to the Foundation as defined in section 3; and
 - (b) any proceedings that immediately before that day might have been brought or continued by the TPC Act Foundation may be brought or continued by the Foundation as defined in section 3; and
 - (c) any remedy that immediately before that day is available against or to the TPC Act Foundation is available against or to the Foundation as defined in section 3.
- (2) On and after transition day, any agreement, instrument or other document that contains a reference to the TPC Act Foundation has effect as if the reference were to the Foundation as defined in section 3, unless the context otherwise requires.

68. Members cease to hold office on transition day

A person who, immediately before transition day, was a member of the TPC Act Foundation ceases to be a member on transition day.

69. First Foundation members under this Act

Four of the members of the Foundation as first constituted under this Act are to hold office for the term, not exceeding 18 months, that is specified in the member's instrument of appointment.

70. First CEO under this Act

- (1) A person who, immediately before transition day, was the executive director of the Foundation under the *Tobacco Products Control Act 2006* section 69(1) must, on and after transition day, be taken to be the CEO.
- (2) The person holds office for the period, beginning on transition day, that is equal to the balance of the person's term of office remaining under the *Tobacco Products Control Act 2006* immediately before transition day.
- (3) Subsection (1) does not apply to a person appointed to act as the executive director.

71. Other employees of Foundation

- (1) A person who, immediately before transition day, was an employee of the Foundation under the *Tobacco Products Control Act 2006* section 69(1) must, on and after transition day, be taken to be a public service officer employed in the Foundation.
- (2) Subsection (1) —
 - (a) does not apply to a person who, immediately before transition day, was the executive director of the Foundation; but
 - (b) applies to a person who, immediately before transition day, was acting as the executive director.

72. Preservation of employee rights

- (1) In this section —

existing employee means a person to whom section 70(1) or 71(1) applies.
- (2) Except as otherwise agreed by an existing employee, the operation of section 70(1) or 71(1) does not —
 - (a) affect the employee's pay as defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* regulation 3(1); or
 - (b) affect the employee's other conditions of service; or
 - (c) affect the employee's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave, which are enforceable against the Foundation or the State; or
 - (d) affect any rights under a superannuation scheme; or
 - (e) interrupt the continuity of the employee's service with the Foundation.

73. People engaged to provide assistance

The repeal or amendment of an enactment by Part 8 or the enactment of this Act does not operate to affect any contract or arrangement that is in effect under the *Tobacco Products Control Act 2006* section 69(2) immediately before transition day.

74. Western Australian Health Promotion Account

- (1) On and after transition day, the TPC Act Account must be taken to be the Account as defined in section 3.
- (2) Money payable to the TPC Act Account before transition day must, on and after transition day, be credited to the Account as defined in section 3.

- (3) The Account as defined in section 3 is charged with any liabilities of the TPC Act Account which arose before transition day.
- (4) On and after transition day, any agreement, instrument or other document that contains a reference to the TPC Act Account has effect as if the reference were to the Account as defined in section 3, unless the context otherwise requires.

75. Investments

- (1) The investment of any money that was authorised under the *Tobacco Products Control Act 2006* section 72 immediately before transition day continues to be authorised on and after transition day as if that section had not been deleted.
- (2) Interest from the invested money, and any money that ceases to be invested, must be credited to the Account as defined in section 3.

76. Exemption from State tax

- (1) In this section —
State tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge, under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.

77. Transitional regulations

- (1) In this section —
publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;
specified means specified or described in regulations made under subsection (2);
transitional matter —
 - (a) means a matter or issue of a transitional nature that arises as a result of a repeal or amendment by Part 8 or the enactment of this Act; and
 - (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —

- (a) required to be prescribed for the purpose of dealing with the transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs must be taken to have existed, or not to have existed, on and after a day that is earlier than publication day for those regulations but not earlier than transition day, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
 - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.
- (6) Regulations can be made under subsection (2) only within 24 months after the day on which this Act receives the Royal Assent.